

### **REMARKS**

The Office Action of September 10, 2007, has been considered by the Applicants. Claim 1 has been amended. Claims 1 and 2 are pending. Reconsideration of the Application is requested.

Claim 1 was amended solely to use correct Markush language per MPEP § 803.02. The scope of the claim has not changed as a result of this amendment.

Claims 1-2 were rejected under 35 U.S.C 102(a) as allegedly anticipated by or under 35 U.S.C. 103(a) as allegedly obvious over Ogata (JP 2002-212463) (hereinafter "JP '463"). Applicants traverse the rejection.

JP '463 is not a proper reference under § 102(a). In particular, Applicants note that JP '463 and the instant application have exactly the same inventive entity: Shiro Ogata and Yoshimitsu Matsui. Thus, JP '463 is not "by others" and a *prima facie* case has not been established. See MPEP § 2132.01. Instead, JP '463 is Applicants' own work and this fact by itself rebuts the alleged *prima facie* case. Applicants' disclosure of his or her own work within the year before the application filing date cannot be used against them under 35 U.S.C. 102(a). *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982), as discussed in MPEP § 2132.01. Therefore, the instant claims are not anticipated by JP '463. Applicants request withdrawal of the § 102(a) rejection based on JP '463.

Because the authorship of JP '463 and the inventors of the instant application are identical, Applicants do not believe an affidavit under either 37 CFR 1.131 or 37 CFR 1.132 is necessary at this time. If the Examiner believes otherwise, however, Applicants would appreciate the opportunity to file such an affidavit in response to a non-final office action for the Examiner's consideration at that time.

**CONCLUSION**

For the above reasons, all pending claims (1 and 2) are in condition for allowance. Withdrawal of the rejections and issuance of a Notice of Allowance is requested.


In the event the Examiner considers personal contact advantageous to the disposition of this case, he is hereby authorized to call Jay F. Moldovanyi, at telephone number 216-861-5582, Cleveland, OH.


It is believed that no fee is due in conjunction with this response. If, however, it is determined that fees are due, authorization is hereby given for deduction of those fees, other than the issue fees, from Deposit Account No. 06-0308.

Respectfully submitted,

FAY SHARPE LLP

November 29, 2007  
Date

  
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CERTIFICATE OF MAILING OR TRANSMISSION	
I hereby certify that this correspondence (and any item referred to herein as being attached or enclosed) is (are) being	
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	Signature: 
Date: November 29, 2007	Name: Lynda S. Kalemba

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